IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 163 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THACKAR VASANT JIVRAJ & OTHERS

Versus

SHAMJI KANJI DAIYA

Appearance:

MR SURESH M SHAH for Petitioner No. 1
..... for Petitioners Nos. 2-5
MR MANOJ N POPAT for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 19/04/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated 7th September, 1987 passed by the learned Extra Assistant

Judge, Bhuj in Regular Civil Appeal No.161/1983, the appellants, plaintiffs in Regular Civil Suit No.532/1979 have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The petitioners are the landlords of the suit premises, a single storeyed building comprising two rooms situated at Bhuj. The petitioners instituted the above referred Regular Civil Suit No.532/1979 in the Court of Civil Judge (J.D.), Bhuj for recovery of possession of the suit premises on the grounds that the defendant was tenant in default; that the defendant was not ready and willing to pay the rent; that the defendant had acquired vacant possession of an alternative suitable residence; that the petitioners required the suit premises bonafide and reasonably for personal use. The learned Civil Judge, by judgment and order dated 3rd October, 1983, dismissed the suit for recovery of possession of the suit premises.

Feeling aggrieved, the petitioners preferred the above referred Regular Civil Appeal No.161/1983 in the Court of District Judge, Kachchha. Pending the Appeal the petitioners filed purshis Exh.33 for permission under Section 13A of the Rent Act to make additional construction. It was stated that the petitioners intended to make additional construction on the suit premises and that the defendant was not ready and willing to handover the vacant possession of the suit premises temporarily to facilitate such additional construction. The petitioners prayed that the petitioners be permitted to make additional construction without dislocating the defendant-tenant. The appeal was heard and decided by the learned Extra Assistant Judge. The learned Judge was of the opinion that as the petitioners had not sought for such a permission before the trial Court, the petitioners had no right to claim permission under Section 13A of the Rent Act before the appellate Court. The lower appellate Court dismissed the appeal by impugned judgment. Therefore, the present Revision Application.

Learned advocate Mr.Shah has submitted that there cannot be a bar against making application for additional construction on the suit premises under Section 13A of the Rent Act. He has submitted that the lower appellate Court has erred in rejecting the claim of the petitioners

without considering the merits of the claim. In support thereof, he has relied upon the judgment of this Court in the matter of Suresh Govindji Kelkar and others v/s Ratilal Dahyabhai [1996(1) GLR 375].

There cannot be any dispute that application for permission under Section 13A of the Rent Act can be made at any stage of the proceeding. The lower appellate Court has thus committed a grave error in not examining the purshis Exh.33 on its merits. It should also be noted that even the petitioners did not produce any material in support of their claim for permission under Section 13A of the Rent Act. Section 13A of the Rent Act enables the Court to permit a landlord to make additional structure on any building which has been let to a tenant if the Court is satisfied that such work will not cause undue hardship to the tenant. In my view, therefore, it shall be the duty of the landlord to satisfy the Court that the proposed additional construction is feasible and shall not cause undue hardship to the tenant. In the present case, as the lower appellate Court has failed to examine the purshis Exh.33 on its merits and as the relevant materials are not on record, the matter shall have to be remanded to the lower appellate Court for decision on purshis Exh.33 on merits.

Mr.Shah has also submitted that petitioners do not press any other point and pray for decision on purshis Exh.33 alone.

In view of the above discussion, the Revision Application is allowed to the extent the lower appellate Court has rejected the prayer made under purshis Exh.33 for additional construction as envisaged by Section 13A of the Rent Act. The decision of the lower appellate Court in so far as the Court has rejected the purshis Exh.33 is quashed and set-aside. The Regular Civil Appeal No.161/1983 is remanded to the lower appellate Court for decision on purshis Exh.33 on merits. The petitioners landlords shall have right to place further materials such as sanctioned plan, etc. on record of the matter. The respondent-tenant shall have right to oppose the purshis Exh.33 and produce or lead necessary evidence. Both the parties shall cooperate in early disposal of the aforesaid limited issue. It is reiterated that the appeal is remanded for limited purpose of decision on purshis Exh.33 alone. No other ground for eviction shall be pressed by the petitioners.

Rule is made absolute in the above terms. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf